

Filing a Complaint

Federal Election Commission

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Introduction

The Commission frequently receives questions on how to file a complaint concerning possible violations of federal election campaign laws.¹ This brochure explains how to file a complaint with the Commission and describes how complaints are processed.²

Filing a Complaint

Any person may file a complaint if he or she believes a violation of the Federal Election Campaign Laws or Commission regulations has occurred or is about to occur. The complaint must be made in writing, and sent to the Office of General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. The original must be submitted along with three copies, if possible. Facsimile transmissions are not acceptable.

A complaint must comply with certain requirements. It **must**:

- Provide the full name and address of the person filing the complaint (called the complainant); and
- Be signed, sworn to and notarized. This means that the notary public's certificate must say "...signed and sworn to before me..."

Furthermore, in order for a complaint to be considered complete and proper, it **should**:

- Clearly recite the facts that show specific violations under the Commission's jurisdiction (citations to the law and regulations are not necessary);
- Clearly identify each person, committee or group that is alleged to have committed a violation (called the respondent);
- Include any documentation supporting the allegations, if available; and
- Differentiate between statements based on the complainant's (the person who files the complaint) personal knowledge and those based on information and belief. Statements not based on personal knowledge should identify the source of the information.

¹ See 2 U.S.C. § 437g and 11 CFR 111.

² Enforcement proceedings originate in other ways as well. For example, other federal agencies sometimes refer an enforcement matter to the Commission; and the Commission, itself, may initiate enforcement proceedings based on information gathered in the normal course of its supervisory functions such as reviewing reports or conducting field audits. In addition, a matter may enter the enforcement process through a *sua sponte* letter, that is, a letter sent by an entity who violates the law and notifies the Commission of the facts of the violation. In some cases, filing *sua sponte* may serve as a mitigating circumstance when the Commission considers the matter.

Complaint: Early Stages

Receipt of Complaint

The Office of General Counsel (OGC) reviews each complaint to determine whether it satisfies the above criteria of a proper complaint. If the complaint does not meet the requirements, OGC notifies the complainant of the deficiencies within 5 days of receipt.

Once a complaint is deemed sufficient, OGC assigns it a MUR (Matter Under Review) number, acknowledges receipt of the complaint and informs the complainant that the Commission will notify him or her when the entire case is resolved. Until then, the Commission is required by law to keep its actions regarding the MUR confidential.

Notice to Respondent

Within 5 days after receiving a proper complaint, OGC sends each respondent a copy of the complaint and a description of the Commission's compliance procedures. The respondent has 15 days to respond in writing, explaining why no action should be taken.

In the case of a complaint that does not satisfy the requirements (see above), the respondent nevertheless receives a copy of the complaint and a letter explaining that the matter will remain confidential for 15 days to give the complainant an opportunity to correct the complaint.

If the complainant corrects and refiles the complaint, the respondent is sent a copy of the corrected complaint and is given 15 days to submit a response to the Commission.

Respondent's Counsel

A respondent who wants to be represented by legal counsel must inform the Commission by sending a "statement of designation of counsel." This document, signed by the respondent, must include a statement authorizing the counsel to receive all communications from the Commission on behalf of the respondent and include the counsel's name, address and telephone number.

Once the Commission receives the "statement of designation of counsel," the agency will communicate only with the counsel unless otherwise authorized by the respondent.

Commission Action

Case Processing

After the 15-day response period has elapsed, OGC evaluates the case to determine whether it warrants the use of the Commission's limited resources. OGC makes this evaluation based on objective criteria approved by the Commission under its enforcement priority system. Cases that meet the threshold criteria are assigned to attorneys as their caseloads permit. Cases that do not, are dismissed by the Commission.

Initial Vote to Proceed (Reason to Believe)

With regard to each case that is assigned to an attorney, the General Counsel reports to the Commission and recommends whether or not there is "reason to believe" the respondent has committed or is about to commit a violation of the law. The Commissioners, however, make the final decision by voting for or against a "reason to believe" recommendation. (Four affirmative votes are required to go forward with any enforcement action.)³ In casting their votes, the Commissioners consider the complaint, the respondent's reply, relevant committee reports on the public record and the General Counsel's analyses and recommendations.⁴

If the Commission decides there is "no reason to believe" a violation has occurred or is about to occur with respect to all of the allegations, the case is closed and the parties involved are notified.

If, on the other hand, the Commission finds that there is "reason to believe" the respondent has violated or is about to violate the law, the Commission opens an investigation.

Investigation

At the beginning of the investigation, the Commission sends a letter notifying the respondent of the "reason to believe" finding.⁵ The letter asks for a written reply and may include questions to be answered by the respondent.

As part of its investigation, the Commission may issue orders requiring sworn written answers, and subpoenas requiring a person to testify or to produce documents. If necessary, the Commission may ask a federal district court to enforce these subpoenas and orders. The investigation may also include less formal procedures, such as investigative interviews, and it may involve parties other than the respondent(s) who may have information pertinent to the complaint. The investigation may also include an audit of the respondent.

General Counsel's Brief

After the investigation is completed, the General Counsel prepares a brief that explains the factual and legal issues of the case and recommends whether the Commission should find there is "probable cause to believe" a violation has occurred or is about to occur. The respondent is sent a copy of the brief and has 15 days to file a reply brief explaining the respondent's position.

³ A complaint may allege several violations, in which case the Commission votes on each allegation separately.

⁴ At any point during the complaint process, however, the Commission has the discretion to take no further action in a particular matter.

⁵ In some cases, where sufficient information is already known, the Commission proposes a written conciliation agreement (see "Resolution of Complaint" section below for description) to resolve the matter at the same time it notifies the respondent of the "reason to believe" finding.

Early Resolution of Complaint (Pre-Probable Cause Conciliation)

Before the Commission mails the respondent the General Counsel's brief containing probable cause recommendations, the respondent may request, in writing, that the matter be resolved through pre-probable cause conciliation negotiations.⁶ Pre-probable cause discussions, which are limited to 30 days (absent an extension), may result in a conciliation agreement between the respondent and the Commission, thereby resolving the matter. (See "Resolution of Complaint" section below for description.)

If the negotiations do not resolve the matter, however, the Commission sends the respondent the brief. The respondent has 15 days to submit a reply brief.

Vote on Violations (Probable Cause to Believe)

After reviewing the briefs of both the General Counsel and the respondent, the Commission votes on whether there is "probable cause to believe" that a violation has occurred or is about to occur. (Four affirmative votes are required.)⁷ If the Commission decides there is "no probable cause to believe," the case is closed and the parties are notified.

If the Commission determines that there is "probable cause to believe" the law has been violated, the General Counsel attempts (for at least 30 days, but not more than 90) to correct or prevent the violation through informal methods of conciliation, i.e., by entering into a written conciliation agreement with the respondent.

Resolution of Complaint (Conciliation Agreement)

If the General Counsel and the respondent negotiate a conciliation agreement, the written agreement becomes effective once it is approved by an affirmative vote of 4 Commissioners and signed by the respondent and the General Counsel. Generally, the agreement includes a description of the facts and the law, admissions of the violations by the respondent, any remedial actions the respondent must take and a provision for the payment of a civil penalty by the respondent. The General Counsel sends a copy of the signed agreement to the respondent and, when the case is closed, to the complainant as well.

If conciliation does not result in an agreement within the 90-day period, the Commission may file suit against the respondent in federal district court.

⁶ In certain circumstances, the Commission will take the initiative to offer a written pre-probable cause agreement to respondent.

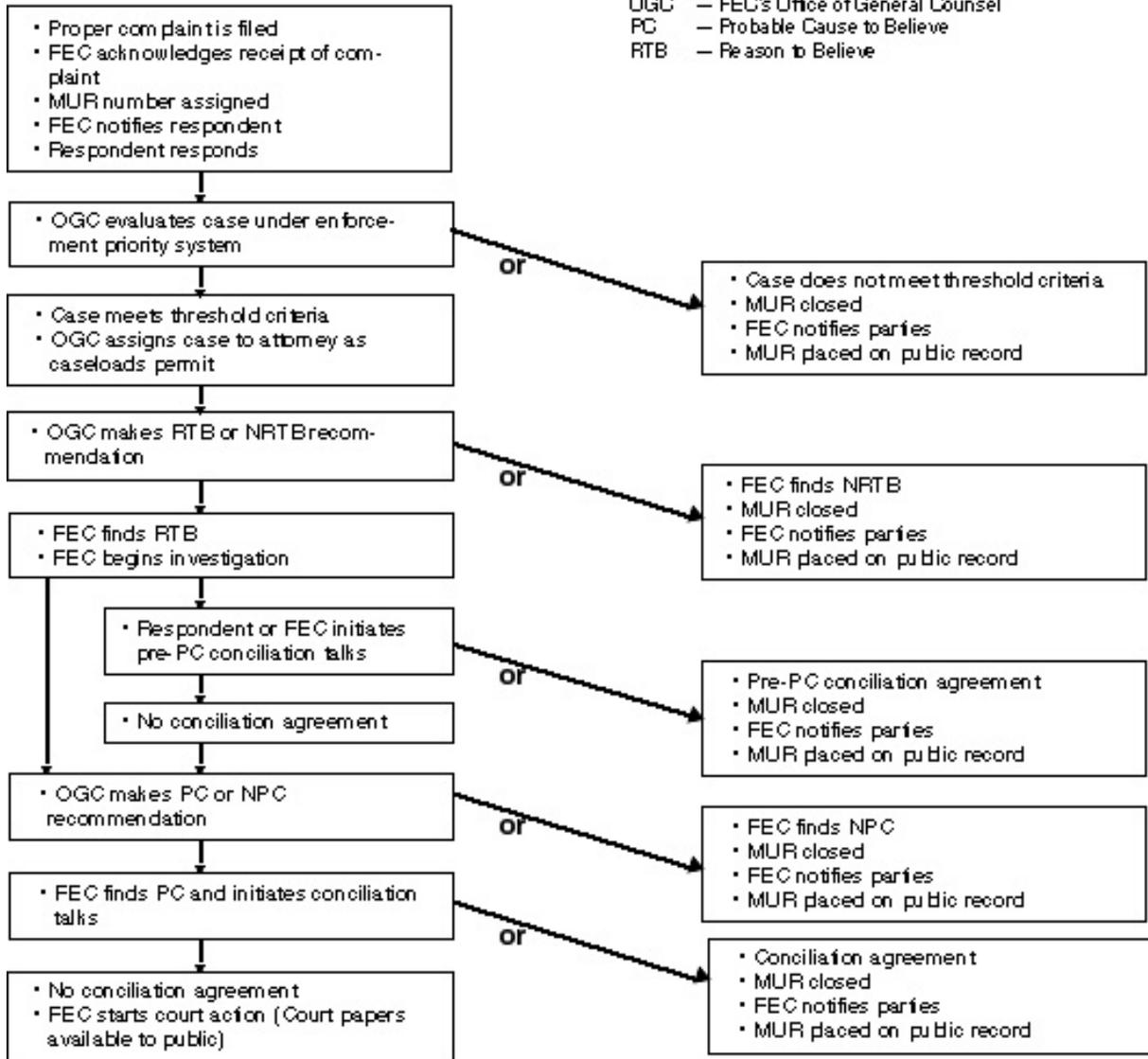
⁷ If several violations are alleged, the Commission votes on each one separately.

Complaint Process

This chart depicts the entire complaint process conducted by the Federal Election Commission as described in this brochure.*

Abbreviations used in this chart:

- FEC — Federal Election Commission
- MUR — Matter Under Review (i.e., complaint file)
- NPC — No Probable Cause to Believe
- NRTB — No Reason To Believe
- OGC — FEC's Office of General Counsel
- PC — Probable Cause to Believe
- RTB — Reason to Believe



* At any point during the complaint process, the Commission has the discretion to take no further action.

Complainant's Recourse

A complainant who disagrees with the Commission's dismissal of a complaint or who believes the Commission failed to act in a timely manner may file a petition in the U.S. District Court for the District of Columbia. In the case of a Commission dismissal, the petition has to be filed within 60 days after the date of the dismissal.

2 U.S.C. § 437g(a)(8).

Confidentiality

To protect the interests of those involved in a complaint, the law requires that any Commission action on a MUR be kept strictly confidential until the case is resolved. These provisions do not, however, prevent a complainant or respondent from disclosing the substance of the complaint itself or the response to that complaint or from engaging in conduct that leads to the publication of information contained in the complaint.⁸ Nevertheless, information about a Commission notification of findings or about a Commission investigation may not be disclosed, unless the respondent waives his or her right to confidentiality, in writing.

Because the public has the right to know the outcome of any enforcement proceeding, a case file is made available to the public in the Press Office and the Office of Public Records within 30 days after the parties involved have been notified that the entire case has been closed.

For More Information

For more information on how to file a complaint, call the Information Division (202/694-1100). All media inquiries and questions concerning the status of a complaint should be directed to the Press Office (202/694-1220). Both offices can also be reached, toll free, at 800/424-9530.

⁸ See Advisory Opinions 1994-32 and 1995-1.